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U.S. Citizenship
and Immigration
Services

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FILE:

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Office: NEBRASKA SERVICE CENTER

Date: JUL 23 2007

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Naura Deadnick

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner is currently a Ph.D. student and computer programmer who seeks employment in the computer sciences. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement and new evidence. For the reasons discussed below, we uphold the director's decision. The petitioner has not established that his track record in computer science, the field he intends to pursue, warrants a waiver of the alien employment certification process in the national interest.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Entomology from the University of Idaho. The petitioner, however, does not intend to pursue employment in that field. Nevertheless, the petitioner holds a Master's degree in Computer Science from the University of Idaho and is currently pursuing a Ph.D. in that field at the same institution. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree.

The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, computer science, and that the proposed benefits of his work, improved survivable network systems, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver.

Matter of New York State Dep't of Transp., 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner studied and worked in the field of entomology in China through 1992. In 1992, the petitioner began pursuing both a Ph.D. in Entomology and a Master's degree in computer science, both of which he received in 1997. From 1998 through 2003, the petitioner worked as a network engineer and a senior information systems engineer for private U.S. companies. In 2003, the petitioner began pursuing his Ph.D. in computer science. The petitioner had not authored a single article in the field of computer science that had been published as of the date of filing. In fact, the petitioner had not published a single article since 1992.

[REDACTED], an associate professor at the University of Idaho and the petitioner's computer science Ph.D. research advisor, discusses the petitioner's work. [REDACTED] explains that Survivable Network Systems (SNS) and Survivable Systems Engineering (SSE) were both initiated in 1999 at Carnegie Mellon University. Survivability is "the capability of a system to fulfill its mission, in a timely manner, in the presence of attacks, failures or accidents." Since that time, there has been increasing awareness of the potential for Internet attacks on telecommunications networks. The petitioner's Ph.D. dissertation proposes a new approach to studying SNS by emulating biological/ecological systems similar to an immune system. [REDACTED] predicts that this work "will produce cutting-edge technology in the area of SNS and SSE and will be very promising in offering architectural solutions for built-in survivability and security products."

[REDACTED] asserts that the petitioner's approach "is solidly based on his deep understanding of several fields apparently unrelated on the surface." Specifically, the petitioner is relying on his experience in computer networking and security, insect biology and ecology, survival analysis statistics and mathematical ecology. [REDACTED] notes that the petitioner's Ph.D. thesis in entomology introduced survival analysis and catastrophe theory to the study of insect populations. [REDACTED] concludes:

The new direction [the petitioner] has proposed and led – approaching to [sic] SNS from the perspectives of biology/ecology systems and using survival analysis as a

modeling tool, is a natural expansion of his core expertise and remarkably broad knowledge domain. For example, his current attempt to develop a "Fault Aggregation" model and "Fault Aggregation Critical Point" is based on his early population aggregation critical density (PACD) model for spatial distribution pattern of insect population. His comparative studies of insect nerve systems, communication messengers (pheromones), and endocrinology (hormone control) with network systems may provide extremely valuable principles and mechanisms for designing network architecture and control mechanisms with enhanced survivability. The relationship between biodiversity and stability in ecosystem and community studies may provide hints for building or enhancing survivability by adjusting protocol diversity or the redundancy of communication channels.

██████████ then goes on to discuss all of the petitioner's accomplishments in entomology, including receipt of a prestigious research funding award limited to young (under 40) faculty members in China. We acknowledge that the petitioner has extensive experience in entomology, including numerous articles, the research funding award and service on an editorial board. According to Professor ██████████ of Beijing Forestry University (BFU), the petitioner authored a widely used textbook on insect pest management, founded the Laboratory of Insect Theoretical Ecology and Computer Modeling at BFU and developed and released three software packages widely used for managing pine forests. We also acknowledge that the petitioner designed software for his entomology research at the University of Idaho, as explained by ██████████ a professor of entomology at the University of Idaho. ██████████ asserts that the petitioner "programmed his models (in C/C++) an essentially insurmountable task for most Ph.D. students of entomology." The issue, however, is not whether the petitioner has unusual computer skills *for an entomologist*. The petitioner seeks to work in the area of computer science, not entomology.

In a subsequent letter, ██████████ indicates that the petitioner is a research scientist on a project funded by the Idaho National Laboratory, U.S. Department of Energy, with the goal of developing analytical methods that can predict the performance and Quality of Service (QoS) stability in Mobile Ad Hoc Networks (MANETs). This research relates to the maintenance of unmanned aerial vehicles (UAVs). ██████████ explains that MANETS are vulnerable to intruders and more prone to fail than other networks. ██████████ asserts that the petitioner's work on this project will "seek inspirations from the natural world, such as biological/ecological systems." ██████████, however, merely discusses proposals. It is not clear that the petitioner had accomplished any influential results on this project as of the date of filing. ██████████ another professor at the University of Idaho, speculates only that the petitioner's "current progress in his research foresees potentially very significant advancement to the modeling of network survivability."

In a third letter, ██████████ asserts that the petitioner has identified problems with existing models and has proposed "several very promising mathematical theories and methods, in particular, Survival Analysis, Swarm Intelligence and Random Graph theory," to address these problems. ██████████ discusses each theory but does not assert that the petitioner has already produced influential results.

In fact, [REDACTED] concedes that the petitioner “has been steadily acquiring the necessary mathematical theories such as Random Graph to accomplish the final stage of his research.” While [REDACTED] explains that the theory is a “fluid open research topic and few researchers outside the domain of pure mathematics command sufficient background to access it,” it remains that, as of the date of filing, the petitioner had yet to produce any final results and widely disseminate those results in the field through publication.

The petitioner has asserted that the letters submitted should be accorded significant weight because they are from experts in the field who, while having worked with the petitioner, have no reason to be biased. We do not question the sincerity and expertise of the petitioner’s references. Letters from one’s immediate circle of colleagues, however, cannot establish the petitioner’s influence beyond that circle. While the petitioner did provide a letter from Professor [REDACTED], director of a research project in France who has not worked with the petitioner, Professor [REDACTED] does not indicate how he learned of the petitioner’s work in computer science and states only that the petitioner’s proposals have the potential to produce significant results. Letters from independent experts are far more persuasive when they are from experts who have learned of the petitioner through his work disseminated in the field and who have applied that work themselves.

On appeal, the petitioner focuses on his publication record in China. He states:

Instead of calculating citation of a particular paper, which could be very tedious, an approximation estimate of the citations of all my papers indexed by scholar.Google.com site can be made by multiplying the number of entries and the average citations per entry. In my case, the total entries are approximately 250, and the citations per entry range from 1 to 32, and most are under 15. Take an average 7 or the even more conservative 5. The total citation should be around 1250 for all my papers.

The petitioner is not persuasive. The petitioner searched for any inclusion of his name, which may be a popular name, not simply those results listing his name within the author category.¹ Thus, the 250 results obtained by the petitioner (370 on appeal) do not represent 250 or 370 articles by him. It can be expected that the petitioner is aware of the number of articles he has actually written as he only lists 27 published articles on his curriculum vitae and submits evidence of no additional articles into the record. It can also be presumed that the petitioner, alleged to be an expert in math, is aware that multiplying the “average” number of citations per article by a number almost 10 times greater than the number of articles he has personally authored will grossly exaggerate the total number of citations of his work. Thus, the petitioner’s credibility is diminished. Moreover, the petitioner has not explained how he determined that one of *his* articles has been cited 32 times. The only article cited 32 times in the Google Scholar results provided on appeal is a 1991 article that references the

¹ The advanced search option on www.scholar.google.com allows the user to search for a name only within the author category. The petitioner did not submit the results of such a search.

petitioner's name but is not authored by him. Specifically, the Chinese characters in the petitioner's name do not appear among the authors of this 1991 article but occur later in the article. The highest number of citations for any article *authored by the petitioner* is six. Most of the petitioner's articles have been cited once or twice. While the petitioner has previously asserted that scholar.Google.com is not complete, it remains that the record lacks evidence that the petitioner's articles have been widely cited by articles not indexed by this site. Thus, the petitioner has not demonstrated that he is widely and frequently cited in entomology.

Regardless, the petitioner's published articles all involve entomology. We do not question that the petitioner is attempting to apply his entomology knowledge within the context of computer science or that his immediate circle of colleagues find such a pursuit promising. It remains, however, that, as of the date of filing, the petitioner has yet to produce any influential results in this area. Any future accomplishments would have to form the basis of a new petition. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). At best, the petition was filed prematurely, before the petitioner obtained significant results in SNS and disseminated those results within the field through publication. Thus, the influence of the petitioner's SNS work cannot be gauged.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.